IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY THE 8TH DAY OF JUNE, 2018
BEFORE THEIR LORDSHIPS

ABDU ABOKI	JUSTICE, COURT OF APPEAL
PETER OLABISI IGE	JUSTICE, COURT OF APPEAL
MOHAMMED MUSTAPHA	JUSTICE, COURT OF APPEAL

CA/A/163C/2016

BETWEEN:

MR TAIWO OGUNJOBI...APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA....................................RESPONDENT

JUDGMENT
(DELIVERED BY PETER OLABISI IGE, JCA)

The Appellant Mr. Taiwo Ogunjobi was arraigned before the Federal High Court in 2010 on ten (10) count charge along with three other persons. The said counts read thus:

1. "COUNT 1:

That you Sani Lulu Abdulahim (m) Amanze Uchegbulam (m), Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of February, 2009 in the office of the Nigeria Football Federation in Abuja, with the Abuja Judicial Division of the Federal High court, while being Board members of the Nigeria Football Federation,

conspired to commit an offence of felony to wit: refusing to follow due process by not requesting for quotations from suppliers, but rather without legal justification opted for emergency procurement procedure in the procurement of 2 numbers Mercedes-benz Irizar buses and thereby committed an offence contrary to and punishable under S. 518(1) and (7) of the Criminal Code Act, Cap. C38, Laws of the Federation, 2004.

2. COUNT 2:

That you Sani Lulu Abdulahi (m) Amanze Uchegbulam (m), Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of February, 2009 in the office of the Nigeria Football Federation in Abuja, with the Abuja Judicial Division of the Federal High Court, while being Board members of the Nigeria football Federation, did breach procurement procedures by not requesting for quotations from suppliers in the procurement of 2 nos. Mercedes-Benz Marcopolo buses but rather without legal justification opted for emergency procurement procedure in awarding the contract to CNBC Nigeria Limited, thereby committed an offence contrary to S. 41 and punishable under S. 58 of the Public Procurement Act, No, 2007.

3. COUNT 3:

That you Sani Lulu Abdulahi (m) Amanze Uchegbulam (m), Dr. Bolaji Oji-Oba (M) and Taiwo Ogunjobi (M) on or about the month of February, 2008, while being Board

and Executive members of the Nigeria Football Federation, in office of the Nigeria Football Federation, in office of the Nigeria Football Federation in the Federal Capital Territory, Abuja within the Abuja Judicial Division of the Federal High Court, did breach procurement procedures to wit: approving the payment of the sum of N82,000,000 (Eighty Two Million Naira) as part payment for the supply of 2 Nos. Mercedez Benz Marcopolo Buses, over and above the maximum payment limit of 15% of the value of the contract sum as mobilization to CNBC Nigeria Limited, thereby committed an offence contrary to S. 35 and punishable under S.58 of the Public Procurement Act, No.14, 2007.

4. COUNT 4:

That you Sani Lulu Abdulahi (m) Amanze Uchegbulam (m), Dr, Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of February, 2010 or thereabout in the office of the Nigeria Football Federation in Abuja, within the Abuja Judicial Division of the Federal High court, while being while being Board members of the Nigeria Football Federation, did abuse the authority of your offices with intent to gain to wit: not buying the particular specification of 2 Nos. Mercedez Benz Marcopolo Buses stated in the contract of supply between the Nigeria Football Deferation and CNBC Limited, but rather opted for the purchase of a 2 Nos. Mercedes-Benz Irizar buses (Century 15500) model buses, a model cheaper and inferior to the Mercedez

Benz Marcopolo Buses at the same rate of N99,000,000 (Ninety Nine Million Naira) thereby committed an offence century to and punishable under S. 104 of the Criminal Code Act, Cap C. 38 Laws of the Federation, 2004.

5. COUNT 5:- (Stuck out on 9th February, 2012 by Hon. Justice Okorowo).

That you Sani Lulu Abdulahi (m) Amanze Uchegbulam (m), Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of April, 2010 in the office of the Nigeria Football Federation in Abuja, within the Abuja Judicial Division of the Federal High Court, while being Board members of the Nigeria Football Federation, did use your offices and positions to corruptly confer unfair advantage upon yourselves to wit: issuing 1,263 tickets as complementary to friends, associates, political support groups and family relation thereby committed an offence contrary to and punishable under S. 104 of the Criminal Code Act, Cap C. 38 Laws of the Federation, 2004.

6. COUNT 6:

That you Sani Lulu Abdulahi on about the month of April 2010, procured the services of one Mr. Tunde Adelakan as a consultant for chartering and hiring of an aircraft to convey Nigeria National Football Team (Super Eagles) to South Africa for the purpose of the 2010 FIFA World Cup, without required notice by publishing express

interest to appoint a Consultant in two National Newspaper and the procurement journey contrary to Section 44(A) of the Public Procurement Act punishable under Section 58(5) (A) of the Public Procurement Act.

7. COUNT 7:

That you Sani Lulu Abdulahi (m) Amanze Uchegbulam (m), Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of April, 2010 in the office of the Nigeria Football Federation in Abuja, within the Abuja Judicial Division of the Federal High court, while being Board and Executive Members of the Nigeria Football Federation, did conspire to abuse your office with intent to gain to wit: corruptly procuring the services of an unbefitting and faulty aircraft from International Air Charter through a consultant, one Mr. Tunde Adelakan, at an amount lower than what ought to be expended on conveying the Team to South Africa, thereby committed the offence of abuse of authority of your officers contrary to and punishable under S.104 of the Criminal Code Act, Cap C.38, Law of the Federation, 2003.

8. COUNT 8:

That your Sani Lulu Abdulahi (m) Amanze Uchegbulam (m), Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of April, 2010 in the office of the Nigeria Football Federation in Abuja, within the Abuja Judicial Division of the Federal High Court, while being Board and Executive members of the Nigeria Football

Federation, did conspire to abuse your office with intent to gain to wit: booking the Hampshire Hotel, being a cheap, substandard, unbefitting and an unlisted hotel not among the approved list of hotels by the Federation in International Football Association (FIFA) for lodging by participating teams and caused the Federation Government to pay a fine to the tune of N$125,000 for breach of contract thereby committed the offence of abuse of your offices with intent to gain contrary to and punishable under S. 104 of the Criminal code Act, Cap. C38 Laws of the Federation, 2004.

9. COUNT 9:

That you Sani Lulu Abdulahi (M) Amanze Uchegbulam (M) Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of April, 2010 in the office of the Nigeria Football Federation in Abuja, within the Abuja Judicial Division of the federal High Court, while being Board and Executive Members of the Nigeria Football Federation, did criminally misappropriate to wit: misappropriating the sum of N900 Million (Nine Hundred Million Naira), $1 Million (One Million Dollars) $200 Thousand Dollars (Two Hundred Thousand), released to the Nigeria Football Federal at various times without giving proper accounts as to how the monies were spent in South Africa, thereby committing an offence of abuse of office contrary to and punishable under S.104 of the Criminal Code Act, Cap. C-38, laws of the Federation, 2004.

10. COUNT 10:

That you Sani Lulu Abdullahi (M), Amanze Uchegbulam (M) Dr. Bolaji Ojo-Oba (M) and Taiwo Ogunjobi (M) on or about the month of April 2010, in the office of Nigeria Football Federation in Abuja, within the Abuja Division of the Federal High Court, while being Board and Executive members of the Nigerian Football Federation, did use your office and position to corruptly confer unfair advantage upon yourself to wit: paying estacode allowance of N800,000 to 220 delegates out of which only 49 persons are authorized Nigerian football Federation officials and 171 persons were friends , associates, political support groups, and family relations, thereby committing an offence contrary to and punishable Under S.104 of the Criminal Code Act Cap, C.38, Laws of the Federation , 2004."

In the course of proceedings counts 5 and 10 of the charge were struck out on 9th February, 2012.

Counts 1, 2, 3, 4, 7, 8 and 9 are against the four Accused Appellant while Count 6 is against only the 2nd Accused. The accused/Appellant pleaded NOT GUILTY to all the counts against him. The other accused persons also pleaded NOT GUILTY to the aforesaid counts and thus the trial of the Accused persons commenced on 22nd of October, 2013. The prosecutor listed (12) twelve witnesses but called only two of the twelve witnesses whereupon the Appellant opted to make a, no case submission. The other co-Accused persons also make a no case submission. The no case submission were overruled on 22nd day of February, 2016.

In a composite ruling on the no case submission the learned trial judge found as follows:

> *"What the Prosecution have labored to assert in this case is that the Public Procurement Act was not followed in the acquisition of two Irazar Buses after Ekenedili Chukwu backed out. Secondly that the Accused persons overshoot their threshold by paying above the 15% mobilization. Further that the Plane chartered to move the supper Eagles from London to South Africa did not fly and Arik came to their rescue."*
>
> *What is more that some fines was paid for not using Hampshire Hotel. This in brief is all the Prosecution is saying. So can one safely say that a prima facie case has not been made.*
>
> *Let me for the umpteenth time state the obvious" I am not here to consider the credibility of the witnesses is of no moment so for all intents and purposes the Court has to consider if the essential ingredients of the 8 Counts Charge have been proved.*
>
> *At this point I am not going to consider whether evidence is so weighty enough to secure conviction. On this my proposition of the law I will place reliance on the cases of EKWUNOGO VS FRN, UBANATU VS COP (2000) 1 SCNJ 50 ADEYEMI VS THE STATE (1991) 6 NWLR (PT 195) @ 35, CHIANUGO VS STATE (2001) FWLR (PTN 74) 243, AND IKOMI VS STATE (1986) 3 NWLR (PT 28) 340 @ 368.*

Having said that Nigerian Football Federation is sound to comply with the Public Procurement Act by virtue of Sections 60 and 53 of the Public Procurement Act, I will be saying the obvious that the evidence led by the Prosecution may have established a prima facie case and the success of which will only be considered when I must have heard the Defendants side of the story and I so hold.

In the circumstance the no case submission of the Defendants fails and it is accordingly dismissed.

The Accused Persons should enter their defence.

That is my Ruling."

The Appellants was dissatisfied with the decision and has by his notice of Appeal dated 8th day of March, 2016 filed the same date appealed to this court on four grounds which without their particulars are as follows:

"2. *PART OF THE DECISION OF THE LOWER COURT APPEALED AGAINST*

The Whole Decision

3. *GROUNDS OF APPEAL*

(i) *The learned trial judge erred in law when he consolidated the no case submissions made by the separate counsel for the different accused persons and treated then as one on the ground that the accused persons addressed on the same issues except count 6.*

(ii) *The learned trial judge erred in law when he held that the learned counsel to the accused persons have at the*

stage of no case submission delved into evaluation of evidence and the probative value of the exhibits that any detailed analysis of the issues canvassed by both the prosecuting counsel and the Defence counsel may have the temptation of commenting on the substantive suit.

(iii) The learned trial judge erred in law when he held that the narrow issue before him is to decide whether the prosecution has raised any issue in the entire gamut of their testimonies that requires an explanation from the accused persons and not whether the Prosecution have led evidence as to secure a conviction.

(iv) Having properly held that the duty of the court in a no case submission is to consider if the essential ingredients of the offences charged have been proved, the learned trial judge erred in law by failing to enter into any such consideration but simply expressed the view that the evidence led by the prosecution may have established a prima facie case and the success of which will only be considered when it would have heard the defendants side of the story before dismissing the no -case submission of the appellant"

The Appellant's brief of Argument was dated and filed the 11th day of April 2016 but deemed properly filed on 15th March, 2018 while the 1st Respondent's brief of argument that is the Federal Republic of Nigeria was dated 20th April, 2016 and filed on 21st April, 2016 but deemed filed on 15th March, 2018.

It must be mentioned in passing that upon the application of the learned counsel to the Appellant, the 2nd, 3rd and 4th Respondents were struck out of this appeal leaving only the 1st Respondent.

The Appellants learned counsel chief Akin Olufunmi SAN distilled two issues for determination as follows:

(i) Whether the lower court validly consolidated the no case submissions made on behalf of the accused persons by their different counsel (Ground 1)

(ii) Whether the lower court gave proper consideration to the no case submissions made on behalf of the appellant before arriving at its decision dismissing same (Ground 2, 3 and 4).

The learned counsel to the 1st Respondent adopted the two issues formulated by the Appellant. The appeal will be determined on the two issues raised for determination by the Appellant. I take the issue together.

(i) Whether the lower court validly consolidated the no-case submissions made on behalf of the accused persons by their different counsel (Ground 1)

(ii) Whether the lower court gave proper consideration to the no-case submission made on behalf of the appellant before arriving at its decision dismissing same (Grounds 2, 3 and 4)

The learned senior counsel to the Appellant stated that the learned trial judge consolidated the no case submission made by

different counsel to the accused persons without the consent of the Appellant and the 2nd - 4th Respondents and that the lower court failed to give separate consideration to the separate no case submissions made by each of the accused persons but treated them together as one on the ground that the accused persons addressed on the same issue except count 6.

That there is nowhere in the court ruling where any specific reference was made to the no case submissions of the Appellant. That consolidation will not be ordered of suits where difference legal practitioners represent the parties or where the defenses put up by the parties differ. That in consolidation of suits each suit retains its individual and separate character and that the trial judge must give separate judgment in respect of each suit. That the trial court failed to do so in the case of the Appellant and other co-accused. That the consolidation of the submissions of the different counsel to the Accused person on the no case submissions were imposed on the accused persons by the lower court.

That it is necessary for this court to intervene as the Appellants no case submissions were not considered by the lower court. That the consolidation made by the lower court was wrong. The following cases were cited and relied upon viz:

1. ILOABUCHI V. EBIGBO (2000) 8 NWLR (PT.668) 197 AT 221 F-H & 223 G-H.
2. KALU V. CHIMA (2007) 17 NWLR (PART 1062) 187 AT 196.
3. NASR V. C.A.E (NIG) LTD. (1997) 5 SC 1.
4. D.S.C. V. OWNERS OF ADITYA PRABHA (1991) 13 NWLR (PART 179) 360 AT 373.

In his own submissions against the Appellant's position on issue 1 (1) the learned counsel to the 1st Respondent contended that the Appellant's submissions go to no issue as according to the learned silk to the Respondent, Chief T.O. Ashaolu SAN they were designed to waste the time of this court. That cases relied upon by the Appellant are not relevant.

That they specifically referred to consolidation on civil actions that the arguments of Appellant bordered on consolidations of suits whereas what is in issues here is a No case submission meaning that the Appellant is saying the prosecution has not made out sufficient case for the defendant to proffer an answer to. He relied on the case of EZENNIA IFEANYI OKWUSOGU VS. COP (2013) LPELR - 219 76 CA. That the charge against the Appellant and others accused were on the same charge sheet and that no complaints of lack of fair hearing can succeed. That there was no prejudice against the Appellant. That the trial judge had properly exercised his discretion relying on the cases of CHARLES OMONUA & ORS VS. MARGARET ONWONUA (2014) LPELR - 22439 CA AND SENATE PRESIDENT VS. NZERUBE (2004) 9 NWLR (PART 878) 25 AT 274.

He prayed the court to hold that the trial judge acted within his jurisdiction in consolidating the ruling to the no case submission in order to save time relying on the cases of CHRISTOPHER OGIDI & ORS V. MWOBIKE OKOLI & ORS (2014) LPELR - 22925 CA. He urged this court to find in favour of Respondent relying on OGIDI V. OKOLI & ORS (2014) SUPRA AND NASR V. COMPLETE HOME ENTERPRISES (NIG.) LTD.

On issue 2 concerning the accusation against the lower court that it failed to properly consider the no case submissions of the Appellant contained on pages 246 to 267 and 292 to 294 of the record. The

learned senior counsel stated that it is the duty of the prosecution to lead credible evidence showing that the accused committed the offence charged. That prosecution has a duty to prove the essential elements of the offence and that where no such prove is established the court can *suo motu* discharge and acquit the accused person or the learned counsel to the accused can make a no case submission. He relied on section 286 of Criminal Procedure Act under which the no case submission was made and consideration which learned silk state is in impari materia with section 303 of the administration of criminal justice Act 2015. He stated the principles behind a no case submissions and cited and relied on the cases of:

1. EMEBO V. STATE 203 (2002) 15 NWLR (PT.789) 996 AT 198-199
2. SUBERU V. STATE (2010) 8 NWLR (PT.1197) 586 AT 590-591 and SECTION 36 OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA as amended among other authorities relied upon.

The learned silk then took the counts against the Appellant one after the other stating the ingredients of the offence that must be proved to establish each of the seven counts against the Appellant on the prosecution. The cumulative effect of the submissions of the learned senior counsel to the Appellant is that the ingredients of the offences for which the Appellant was charged were not established and as such no prima facie case has been established against the Appellant on any of the counts. He urged this court to intervene and set aside the ruling of the lower court and uphold the no case submission of the Appellant.

In his response, the learned senior counsel to the 1st Respondent contended under issue 2 that the Appellant has misconstrued the whole essence of the submission of no case to answer. He too went through each of the counts against the Appellant and strongly submitted that the prosecution has made out a prima facie case against the Appellant on all the counts. That all the elements of each of the counts against the Appellant have been established. That the evidence before the lower court has made out prima facie case against the Appellant requiring him to be called upon to enter upon his defence to the counts against him.

The learned senior counsel relied on the following cases among the legion of authorities called viz:

1. OLAWALE AJIBOYE V. THE STATE (1995) 8 NWLR (PT.414) 408.
2. BELLO V. THE STATE (1967) IALL NLR 233 AT 227.
3. ODENEYE V. STATE (2001) 2 NWLR (PT 697) 311.
4. UZMAN KAZA V. THE STATE (2008) 1 - 2 SC 152 AND
5. STATE V. NWACHINEKE (2008) ALL F. N.L.R (PT.398) 206 CA.

He also relied on sections 32, 35, 36, 41 and 43 of Procurement Act and Submitted that the Appellant flouted those sections of the Procurements Act and that Appellant ought to answer the case against him.

Civil or criminal matters are usually consolidated to be heard or dealt with simultaneously where it is eminently shown that some common questions of facts and law arise that are common relevant and pertain to the actions sought to be consolidated in order to save time and in order for the parties in such consolidated actions to conveniently put before the court in their evidence and addresses of

their learned counsel to the court seised of the trial and hearing of the actions consolidated.

It is to enable the court seised of the matters to resolve the legal issues or facts common to the consolidated suits or action at in the suits at the same time.

It must be stated however that each of the consolidated action or suit retains their individual existence and separate character. Thus a judge or the trial court seised of the hearing of consolidated matters must give separate judgment or decision in each of the consolidated matters. See CHIEF UJILE & NGERE & ORS VS. CHIEF JOB WILLIAMS OKURUTE "XIV" & ORS (2015) LPELR - 247 49 DC 1 AT 15 - 17 per I.T. MUHAMMAD JSC.

Consolidation of suits or action will not be ordered where it will cause intractable problems or delays in the hearing and determination of the actions sought be consolidated. See NGERE V. OKURUTE Supra per MUHAMMED, JSC.

The real import and essence of consolidation of the actions or suits or applications have been reiterated and espoused very recently in the case of PATIENCE IKORO EYE VS. THE FRN (2018 7 NWLR (PT.1619) 495 AT 513 E-H TO 515 per PETER ODILI, JSC as follows:

> ***"What is at play is the issue of what a court must do when it consolidates suits and what it entails when an order of consolidation is made. A journey back in time into the facts of this case would assist and that is that the learned trial Judge on the 9th day of June 2015 consolidated the applications for bail of all the defendants including the herein appellant and heard then. It is necessary to state that it is permissible in***

law to consolidate suits or applications so as to get a speedy resolution of the nagging issues and possibly remove bottlenecks or hurdles that might impede the main suit which would not happen where the applications and suits are to be handled separately. To get to the decision to order consolidation, the court gets to that position satisfied that there are common questions of law or facts arising in both or all the causes or matters or even the rights to relief which are claimed in respect of or arise out of the same transactions or for some other reasons in which it makes it desirable to make an order under the rules of court. Therefore consolidation so to speak of suits or applications is generally made for expediency and convenience such that those suits or applications having same common characteristics of law or facts or stemming from a common transaction may be heard and determined at the same time in order to avoid multiplicity of actions and to economize time and costs.

To embark on consolidation of suits or applications, the court doing so has a bounden duty, which it must discharge, and that is, that each of the suits or applications must be resolved in their individual or distinct identity in that common trial. In other words, consolidation does not take away the separate identity of a particular suit or application does not take away the separate identity of a particular suit or application within that grouping. Also evidence accepted in one suit or application is not evidence in any of the others. This

scenario the court must bear in mind and in sight throughout, from the beginning of the consolidation till the conclusion at the judgment stage or ruling point. I refer to DUGBO V. KPOROARO (1958) SCNLR 180; DIAB NASR V. COMPLETE HOME ENTERPRISES (NIG.) LTD. (1977) 5 SC 1; ILOABUDHI V. EBIGBO (2000) 8 NWLR (PT. 668) 197.

The guiding principle above stated, it turned out that in the case in hand the trial court fused the applications and delivered a single ruling in respect of all six applications. In this error, the learned trial Judge failed to consider the affidavit and further affidavit of the appellant before rejecting her bail application and this happened because that court missed its way and referred to what was not in the affidavit of the appellant and the counter affidavit against the application. Also entered into submissions that were nonexistent as counsel for the appellant made no such. The circumstances that arose showed that the court of first instance having jumbled all the applications and treating them as one utilized facts or evidence that had no relationship or relevant to specific application of the appellant. The fall out therefore is that the right of fair hearing of the appellant had been clearly breached and the correctness of the decision was neither here nor there. This is because the proceedings having been fundamentally flawed on account of this failure to adhere to the rule of natural justice of the appellant's

right to fair hearing jeopardized the proceedings and nothing could come out of it. The dictum of my learned brother, KEKERE-EKUN, JSC in INOGHA MFA & ORS V. MFA INONGHA (2014) LPELR-22010 (SC) (2014) 4 NWLR (PT.1397)343 AT PAGE 375-376 PARAS. F-D is apt for my use and I follow it. He stated thus:-

> *"It is also well settled that any proceedings conducted in breach of a party's right to fair hearing, no matter how well conducted would be rendered a nullity. See Tsokwa Moters (Nig.) Ltd v. UBA Plc. (2008) All FWLR (Pt.403) 1240 @1255 A-B; (2008) 2 NWLR (Pt.1071)347; Adigun v. A-G. Oyo State (1987) 1 NWLR (Pt.53) 674; Okafor v. A-G Anambra State (1991)3 NWLR (Pt.200) 59; Leaders & Co. Ltd v. Bamaiyi (2010) 18 NWLR (Pt.1225) 327. "The law is indeed well-settled that fair hearing within the meaning of section 36(1) of the Constitution of Federal Republic of Nigeria, 1999, means a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to the parties. It requires the observation or observance of the twin pillars of the rules of natural justice, namely audi alteram partem and nemo judex in causa sua. These rules, the obligation to hear the other side of a dispute or the right of a party in dispute to be heard, is so basic and fundamental a principle of our adjudicatory system in the determination of*

disputes that it cannot be compromised on any ground. See Nwokoro v. Oruma (1990) 3 NWLR (Pt.136) 22. The effect of a denial of fair hearing is trite in law. In order words, once there is a breach of the right of fair hearing, the whole proceeding in the course of which the breach occurred and the decision arrived at by the court becomes a nullity.

The situation is well cut out and clearly with the proceedings that have come unhinged the decision of the trial court has nothing to hang on and so the Court of Appeal was wrong to have sustained that flawed decision.

In the light of the foregoing and the better reasoning in the lead judgment, I also allow the appeal and abide by the consequential orders made."

It must however be stated in this case that submissions on no case submissions made on behalf of each of the accused defendants charged before the court by their respective learned counsel are all cumulatively targeted against the prosecution's case against the accused persons. All they were saying in unison is that the various elements or ingredients constituting each of the counts charged against the accused persons have not been proved or established and that whatever evidence linking the Accused persons or each of them from the prosecution witnesses have been thoroughly discredited

under cross examination that no reasonable tribunal would call upon the accused persons or any of them to enter upon his defence.

The learned trial judge did not need the consent of the accused persons to write a composite ruling on the various submissions of no case answer made separately on behalf of the accused persons including the Appellant. What is important and that is expected of the learned trial judge is to examine thoroughly the position of each of the accused persons vis-à-vis the evidence linking each of the accused with the offence and to there and then in his ruling discharged and acquits any of the accused persons against whom there is no prima facie evidence from the prosecution linking such accused person or defendant with any of the counts or offences for which the accused or accused persons stand charged.

The principles of a no case submissions are well settled and the same in all criminal matters. The fact that the learned trial judge did not separately deal with submissions in respect of each of the accused and consider the elements of offences one after the other in respect of each of the accused person did not occasion any miscarriage of justice. In any event the learned trial judge asked pertinent questions before arriving at decision on the no case submission when he said:

> ***"I will now come into the issue at stake, which is has the Prosecution made out a case to warrant an explanation from the Accused Persons.***
>
> ***It is pathetic that the Learned Counsel at this state of no case submission has unwittingly delve into evaluation of evidence and the probative value of the exhibits, that any detailed analysis of the issues canvassed by both the prosecuting Counsel and the Defence Counsel may have the temptation of commenting on the Substantive Suit.***

The issue before me is to be decided under a narrow compass have the Prosecution made out a prima facie case i.e. have they raised any issue in the entire gamut of their testimonies that requires an explanation from the Accused Persons, not whether the Prosecution have led evidence as to secure a conviction.

On this my proposition of the law I will place reliance on the cases of Duru vs. Nwosu (1989) 4 NWLR (Pt.113) @ 24 and Ajibade vs. IGP (1998) SCNLR 60.

So I will just state that since am not called to ascribe probative value to the testimonies of witnesses can it safely be said that the Prosecution have led evidence which requires some explanation.

Will before answering that poser state and rely on the case of Chanugo vs. State (200) 2 NWLR (Pt.750) 225 @233 and Onagoruwa v. State (1988) 5 NWLR (P.94) 255@ 268."

This is not a case of consolidation of different criminal cases for hearing and determination of the same time but a no case submissions. What is important is whether there is any scintilla of evidence before the court after the prosecution had closed its case against the accused persons linking any of them including the Appellant requiring the Appellant to enter upon his defence.

Issue one (1) is resolved against the Appellant.

I now move to issue two as to whether the learned trial judge was right in dismissing the submissions of no case to answer made on behalf of the Appellant.

The settled position in this Country is that the system of criminal administration of justice adopted in Nigeria is that of accusatorial and not inquisitorial system.

It means the Accused defendant/defendant is presumed innocent until his quilt is established. I call in aid the case of DAVID USO V. COP (1972) 11 SC 37 AT 46-47 where ERLAS then CJN of blessed memory said:

> ***"In our system of criminal trial, the Judge as umpire is not expected to descend into the arena. This illustrates the difference between the inquisitorial method of trying an accused person the difference between the Anglo-Saxon and the Civil Law systems. Our procedure is accusational in the sense that the innocence of the accused is presumed until he is proved guilty by the prosecution.***
>
> ***Under the inquisitional system of trial which obtains in most continental legal systems, the Judge plays a dynamic role in cross-examining litigants and witnesses and the accused's guilt is presumed until he proved his innocence."***

See also Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria.

Thus one does not begin to inquire whether an accused is guilty of a crime until it has been established that a crime has been committed and the Accused is linked as the culprit. See THE STATE VS. OMADA EDOBOR & ORS (1975) 9-11 SC 69 AT 78.

This explained the right of an accused person to make a no case submission after the close of prosecution's case stating or contending

that he conceives that no case has been made out against him to necessitate his being called upon to enter upon his defence. In other words that no prima facie, case has been made out against him by the evidence proffered or tendered by prosecution witnesses.

The expression "Prima Facie Case" has received numerous judicial pronouncements in Criminal Matters. The first port of call is the case of Ajidagba vs. Inspector - General of Police (1958) NSCC 20 at 21-22 per Abbott F. J. who said:

> ***"We have been at some pains to find a definition of the term "Prima Facie Case." The term, so far as we can find has not been defined either in the English or in the Nigerian Court."***
>
> ***In an India Case however, SHER SINGH VS. JITENDRANA THSEN (1931) I.L.R. 50 CAL C. 275 we find the following dicta:***
>
> > ***"What is meant by a prima Facie Case? It only means that there is a ground for proceeding ... But a Prima Facie Case is not the same as proof which comes later when the Court has to find whether the accused is guilty or not guilty ... The evidence discloses a Prima Facie Case when it is such that if uncontradicted and it believed it will be sufficient to prove the case against the accused per Lort-Williams J."***

The real import of a no case submission has been positively enacted in the case of GODWIN DABOH & ANOR. VS THE STATE (1977) 5 SC 197 AT 209-211 where SIR UDO UDOMA, JSC neatly encapsulated it thus:

"Before however, embarking upon such an exercise, it is perhaps expedient here to observe that it is well known rule of Criminal Practice, that in Criminal trial at the close of the case for the prosecution, a submission of no Prima Facie Case to answer made on behalf of an accused person postulates one or two things or both of them at once.

Firstly, such a submission postulates that there has been throughout the trial no legally admissible evidence at all against the accused person on behalf of whom the submission has been made linking him in any way with the commission of the offence with which he has been charged, which would necessitate his being called upon for his defence.

Secondly, as has been so eloquently submitted by Chief Awolowo, that whatever evidence there was which might have linked the accused person with the offence has been so discredited the no reasonable Court can be called upon to act on it as establishing criminal guilt in the accused concerned and in the case of trial by jury, that the case ought therefore to be withdrawn from the jury and ought not to go for a verdict. On the other hand it is well settled that in the case of a trial by jury, no less than in a trial without a jury, however slight the evidence linking an accused person with the commission of the offence charged might be, the case ought to be allowed to go to the jury. Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial Court is not thereby called

> ***upon at that stage to express opinion on the evidence before it. The Court is only called upon to take note and to rule accordingly that there is before the Court no legally admissible evidence linking the accused person with the commission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail."***

The position was recently reemphasized by the apex court in the land in the case of IKUFORIJI V. FRN. (2018) 6 NWLR (PT.1614) 142 AT 159 G-H TO 160 A- per EKO, JSC who said:

> ***"The appellant, apart from the allegation that he received cash payments in excess of the prescribed statutory threshold, is also being prosecuted for conspiracy to commit the crime under sections I respectively of MLPA 2004 and MLPS, 2011. The essential element of conspiracy is the agreement to do an unlawful act, or agreement to do a lawful act by an unlawful means. See Daboh & Anor. v. The State (1977) 2 NSCC 309; Okosun v. A-G, Bendel State (1985)3 NWLR (Pt.12)283 at 297; Abacha v. The State (2002) 11 NWLR (Pt.779) 437 at 523. It is now trite that the proof of conspiracy is generally a matter of inference, deduced from certain criminal acts of the parties concerned, which acts are done in pursuance of an apparent criminal purpose that is in common between the conspirators. See Daboh & Anor. v. The State (supra) at 319.***

My Lords, I have been able to set out the elements of the substantive offense under MLPA, 2004 and MLPA, 2011, and the criminal conspiracy that the respondent, as the prosecutor, is required to establish in order that a prima facie case would be said to have been established. Prima facie means "first appearance". The phrase, when it is applied to the rule on onus of proof in the law of evidence, means that the case is supported by such evidence, as are available, on every material issue of the offences charged that, if no rebuttal evidence is called; it is sufficient to establish the fact in issue. Thus, as it was stated in Police v. Ajidagba 3 FSC 5, reported as Ajidagba v. I.G.P. (1956) SCNLR 60; evidence discloses a prima facie case when the evidence is such that if, uncontradicted, and it is accepted, will be sufficient to prove the case against the accused person. Therefore, if at the close of the prosecution's case the evidence so far marshaled against the accused is such that if it could be presumed to be true in relation to the fact in issue, unless rebutted or disproved by some other evidence to the contrary; then, a prima facie case has been disclosed to warrant calling on the accused to offer his exculpatory defence. See Onagoruwa v. The State (1993) 7 NWLR (Pt.303) 49at 81-82; Tongo v. The State (2007) 30 NSCQR 180 at 192-193; (2007) 12 NWLR (Pt.1049) 525."

Putting it rather negatively, on the authority of FAGORIOLA V. FRN (2013) 17 NWLR (PT.1383) 322,

the appellant's counsel submits that a no case submission connotes that there is no evidence on which the court will convict, even if the trial court believe the evidence adduced by the prosecution. The submission is correct in law. Juxtaposing the facts disclosed by the evidence of the PW1 and PW2, and the documentary evidence vis-à-vis the charges the appellant is defending at the trial court, I am of the firm view that a prima facie case has been disclosed by the prosecution's evidence at the trial court to warrant the appellant being called upon to offer his defence. I bear in mind that at the stage of a no-case submission, the court is not called upon to express any opinion on the evidence before it, as to their probative value. All that the court is called upon to rule on, at this stage, is simply whether there exist legally admissible evidence linking the accused person with the commission of the alleged offence (s): and if the no-case submission is on the basis of some discredited evidence such discredited evidence must be on the face of the printed record and in respect of relevant and material fact. See DABOH & ORS V. THE STATE (SUPRA) AT 315. As I earlier pointed out in the instant case, the no-case submission was made largely on the basis of there being no legally admissible evidence linking the appellant with the commission of the alleged criminal offences."

The learned trial judge appeared to me to have missed the whole essence and implication of a no case submission as laid down by the

Supreme Court of Nigeria in the authorities cited to the lower court. This is eminently discernible from the record of appeal pages 451-452 where the lower court said:

> ***"Having said that Nigeria Football Federation is bound to comply with the Public Procurement Act by virtue of Sections 60 and 53 of the Public Procurement Act, I will be saying the obvious that the evidence led by the Prosecution may have established a prima facie case and the success of which will only be considered when I must hear the Defendant's side of the story and I so hold.***
>
> ***In the circumstance the no case submission of the Defendants fails and it is accordingly dismissed.***
>
> ***The Accused Persons should enter their defence.***
>
> ***That is my Ruling."***

In order words the success or otherwise of the no cases will be determined after the accused/defendants including the Appellant must have testified. This is a clear breach of one of the settled principles of a no case submission which states that if at the close of the prosecution's case there is no evidence linking the accused with the commission of the offence the Accused would be discharged.

The elements of the offence must have been prima facie established before an accused will be ask to enter upon his defence. The learned trial judge was not sure if the evidence of the prosecution have established prima facie case unless and until the accused had testified. This patently wrong and antithesis to the laid down procedure on what a trial judge should look for in order to determine if prima facie case was made out.

The evidence from the Accused person is of no relevance at that stage of no case submission since what the accused in this case were saying is that the charges against them have not been established vide evidence sufficient enough to warrant their being called upon to defend themselves.

The constitution of the Federal Republic of Nigeria 1999 as amended section 36 (5) thereof provides that an accused is presumed to be innocent until proved guilty. So unless there is evidence against an Accused at the close of prosecution's case no matter how slight sufficient to convict him if no evidence is given by the Accused, there is no duty on accused to establish his innocence.

The principles guiding a no case submission have now been explicably enacted in sections 302 and 303 of the Administration of Criminal Justice Act 2015 which all provides:

***"302.** The court may, on its own motion or on application by the defendant after hearing the evidence for the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding not guilty in respect of the defendant without calling on him or them to enter his or their defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence.*

***303.(1).** Where the defendant or his legal practitioner makes a no case submission in accordance with the provisions of this Act, the court shall call on the prosecutor to reply.*

(2) *The defendant or his legal practitioner has the right to reply to any new point of law raised by the prosecutor, after which, the court shall give its ruling*

(3) *In considering the application of the defendant under section 303, the court shall, in the exercise of its discretion, have regard to whether:*

(a) *an essential element of the offence has been proved;*

(b) *there is evidence linking the defendant with the commission of the offence with which he is charged;*

(c) *the evidence so far led is such that no reasonable court or tribunal would convict on it; and*

(d) *any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer."*

Thus it will amount to a negation of the law for a court seised of a criminal matter and before which a no case submission(s) have made to wait till it hears the evidence or defendants' story before taking a decision one way or the other on the no case submissions. It has no support in law.

However and in the interest of justice, I have read calmly the pieces of evidence given by the prosecution's witnesses (PW1 and PW2) and I am of the firm view that there is no evidence on record establishing offence of conspiracy or facts from which the lower court or this court can infer such conspiracy to commit the offences contained in the counts in charge against the Accused person now Appellant. There is also no prima facie evidence given or proffered by

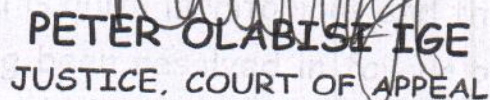
the prosecution's witnesses establishing any of the ingredients or elements of the offences for which the appellant was charged.

I agree *in toto* with all the submissions of the Appellant particularly on the diligent analysis of the ingredients of the offences against the Appellant and the submissions to the effect that the no case submissions ought to have been upheld by the court.

Issue two (2) is here by resolved in favour of the Appellant.

In the result and notwithstanding that issue one was resolved against the Appellant, the Appellant appeal is quite meritorious and the appeal is hereby allowed. Issue (II) having been resolved in favour of the Appellant, the ruling of the Federal High Court of Nigeria delivered by Hon. Justice S. Chukwu on 22nd day of February, 2016 is hereby set aside.

The Appellant is hereby accordingly discharged on all the counts contained in the charge against him as there is no sufficient evidence against the Appellant to justify the continuation of the trial. The Appellant is not guilty in respect of all the aforesaid counts against him (Counts 1, 2, 3, 4, 7, 8 and 9 respectively). The no case submission is upheld and the Appellant is hereby discharged and acquitted.



PETER OLABISI IGE
JUSTICE, COURT OF APPEAL

APPEARANCES:

OLUMIDE OLUJINMI with A. ABAYOMI, ESQ, RICARDO EBIKAELE, ESQ, ADEMOLA O. OWOLABI, ESQ and ABIOLA BALOGUN, ESQ for the APPELLANT.

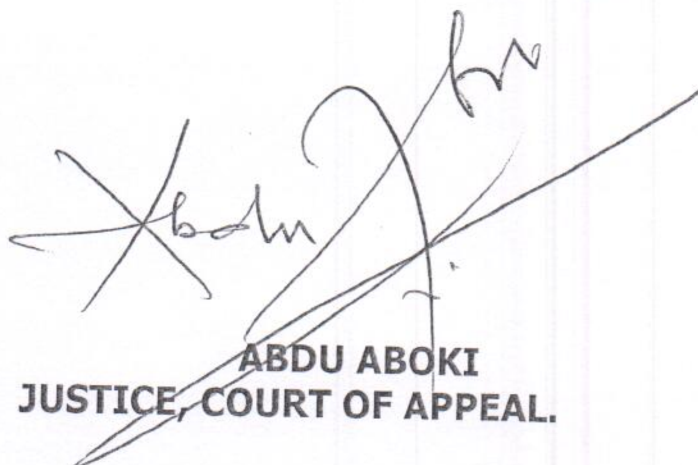
GBENGA A. ASHAOLU with FATIMA A. SHEHU and SMART I. ALIU for 1ST RESPONDENT.

CA/A/163^{c}/2016

ABDU ABOKI, PJCA

I have had the privilege of reading before now the lead judgment just delivered by my Learned Brother **PETER OLABISI IGE, JCA.** His Lordship has adroitly dealt with the issues distilled for determination. I adopt as mine, the reasoning and conclusions reached therein, that this appeal is meritorious. It is hereby allowed.

I abide by the consequential orders as contained in the lead judgment.

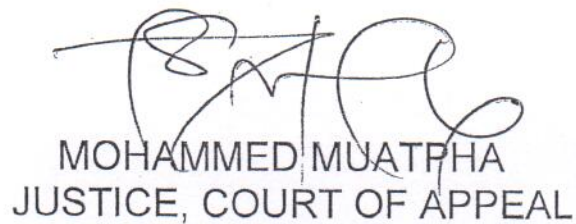


ABDU ABOKI
JUSTICE, COURT OF APPEAL.

APPEAL NO: CA/A/163^{C}/2016
MOHAMMED MUSTAPHA, JCA.

I read a draft copy of the judgment just delivered by my learned brother, **Peter Olabisi Ige, JCA**.

I agree with the reasons and adopt the conclusion therein as mine.



MOHAMMED MUATPHA
JUSTICE, COURT OF APPEAL